IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.710 OF 2006

Indian Oil Corporation Ltd. .. Appellant.
Vs.
Smt.Alka Agarwal .. Respondent.

Mr.Walawalkar with Mr.Chirag Mody i/b RMG Law Associates for the appellants.
Mr.Bruno Castellina for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 6TH MARCH, 2007

ORAL ORDER:

. Heard learned counsel for the parties.

2. This Second Appeal by the original defendants is directed against concurrent judgments of the courts below by which a suit instituted by the respondent-plaintif for recovery of possession and mesne profits stands decreed. The plaintiff is the owner of a plot in dispute. Her predecessor in title had leased out the suit plot to the appellant-defendants on 1.1.1973 vide registered lease deed. The plot was to be used for the defendants retail outlet of petroleum products (petrol pump service station). In 1985, the plaintiff became the owner of the suit plot by virtue of a gift deed executed by her predecessor in title. Admittedly, she was recognised as a landlady by the defendants.

3. As per the terms of the lease deed the parties had agreed to renew the lease for two terms of 10 years each after expiry of the first 20 years term subject to the right of the plaintiff to terminate the lease on account of a breach of conditions therein. As per the terms of the lease deed, for further renewal, the defendants were obliged to give notice in writing expressing their intention to renew the lease for next term of 10 years. Initial term of 20 years expired on 31.12.1992.

4. According to the defendants on 15.9.1992 they sent a notice in writing, expressing their intention to renewal of lease for the next term of 10 years. After considering a controversy whether such notice was issued by the defendants and received by the plaintiff, the appellate court held that the notice dated 15.9.1992 was duly served on the plaintiff. Despite this notice the defendants did not take any steps to get the lease renewed for further period of ten years as per the terms of the first lease deed dated 1.1.1972. There is no dispute that the defendants continued to send rent every month and the plaintiff accepted it without protest. On 29.8.2000 the respondent sent a notice terminating the lease and called upon the appellant to vacate the suit plot and since they did not act upon the said notice she filed

the present suit for recovery of possession. Both the courts below after having considered overall facts and circumstances of the case decreed the suit.

5. Mr.Walawalkar, learned senior counsel for the defendants at the outset submitted that grounds (d), (e) and (i) are the substantial questions of law involved in the present appeal. He submitted that the lease deed cannot be deemed to have expired by efflux of time even when the defendants by their letter/notice dated 15.9.1992 exercised the option to renew the lease deed dated 1.1.1972 in terms of the said lease deed. He submitted that the conduct of the plaintiffs suggest that lease deed stood renewed on same terms and conditions as existed in the first deed. He further submitted, the defendant having exercised an option of renewal by sending the notice and the plaintiff having accepted it by keeping silent, it is not open for her to terminate the lease in any manner other then as set out in the lease deed dated 1.1.1972. He submitted that there was no cause for her to terminate the lease. He submitted that no breach of any of the terms and conditions was made/committed by the defendant and in view thereof, as provided for in the lease deed, it was not open for the plaintiff to terminate the lease. Mr.Walawalkar, then submitted that the decree of eviction passed

against the defendant is not sustainable on the facts and in law when the plaintiff-lessor by acquiescence in renewal of lease exercised by the defendant, was estopped from terminating the lease prematurely. He then submitted that the provisions of section 107 of the Transfer of Property Act, 1882 (for short "the Act") are not attracted in the present case since after expiry of the first period of 20 years the lease was continued on month to month basis and not terminable before expiry of 10 years. If the act of termination is held to be illegal the suit must fail.

6. On the other hand Mr.Castellino, learned counsel for the plaintiff invited my attention to the provisions of section 106, 107 and 116 as also the judgment of the Supreme Court in **Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others AIR 1988 Supreme Court 1470** and submitted that the courts below have rightly appreciated all these provisions as also the judgment of the Supreme Court and decreed the suit for the reasons stated in the impugned judgments.

7. Few admitted facts are required to be noticed for better appreciation of the submissions on the questions of law. The admitted facts are as follows: The first 20 years period of lease expired on 31st

December, 1992. During this period the defendants were paying Rs.500/- lease rent. On expiry of the first period of 20 years the defendants served notice dated 15.9.1992 (Exhibit-62) expressing their willingness to complete all necessary formalities required for renewal of the lease under the terms and conditions as contained therein. Despite such notice, no efforts whatsoever were made by the defendants for getting the lease renewed for next 10 years and they continued in possession and to pay rent as per the terms of the lease deed of 1972. Under clause (g) in the lease deed of 1972 the parties had agreed that the lease will be renewed for further period of 10 years on such terms and conditions and at such rent and shall be under and subject to the covenant conditions and agreement as may be agreed upon between the parties. Admittedly, no such lease agreement was executed after expiry of the first 20 years period.

8. Against the backdrop of these facts, at the outset, I would like to consider the judgment of the Apex Court on which a heavy reliance was placed upon by the plaintiff before me. In **Burmah Shell Oil Distributing** (supra) interalia the facts, as reflected in paragraphs 1 and 4 of the report and the facts of the present case are similar. In that case the questions that "In absence of any registered

instrument executed by both the parties (the lessor and lessee) after the period stipulated in Ext.4 i.e. the period of ten years, can it be said that the lease was extended automatically for a period of five years in terms of Ext.4 or further whether the lessee was holding the suit property as tenancy from month to month ?. The Supreme Court after having considered the provisions of section 106, 107 and 116 held that "**Since the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor and the lessee**. **In the absence of registered instrument, the lease shall be deemed to be "lease from month to month**". It is clear from the very language of S.107 of the Act which postulates that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease. Section 116 of the Act deals with the effect of holding over and provides that if a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to

year, or from month to month, according to the purpose for which the property is leased, as specified in S.106.

9. In the present case after expiry of the first 20 years period, though a notice dated 15.9.1992 was given by the defendants, they chose to remain silent till they were served with the notice by the plaintiff on 29.8.2000 terminating the lease. They did not call upon the plaintiff to execute the lease deed for further period of 10 years. Admittedly, there is no registered instrument executed between the parties after expiry of 20 years. It is clear from the very language of section 107 of the Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease. In view of the clear provisions of section 107, in the absence of registered instrument it must be held that it was holding over and not continuation of old tenancy for further period of 10 years. That would be harmonious construction of section 107 read with section 116 in the facts of the present case. The tenancy after the first period of 20 years was automatically determined on the expiry of 20 years period which was stipulated in the lease deed.

Thereafter the petitioner-lessee continued to hold the property and the lessor accepted the rent. The lease was, therefore, renewed from month to month. The present case is squarely covered by the judgment of the Supreme Court in **Burmah Shell Oil Distributing** (supra).

10. In the circumstances I have no hesitation to hold that the tenancy was automatically determined on expiry of 20 years which was stipulated in the lease deed dated 1.1.1973. Thereafter the defendant - lessee continued to hold the property. This also will have to be appreciated against the backdrop of the fact that no lease deed as contemplated in clause (g) of 1973 lease deed was executed. No terms and conditions were decided as agreed by them in clause (g) and, therefore, it cannot be stated that the lease continued on same terms and conditions as submitted by the appellants. The appeal court has appreciated this all in proper perspective. In this view of the matter the submissions of Mr.Walawalkar, learned senior counsel for the appellant has no merit. In the circumstances, I find no substance in the appeal, hence the second appeal fails and dismissed as such.

11. At this stage Mr.Walawalkar, learned senior counsel for the appellant prayed for stay of execution

of the decree for a period of 12 weeks to enable the appellants to approach the Supreme Court against this order. The learned counsel for the respondents did not seriously oppose the prayer. In view thereof the execution of the decree shall remain stayed for a period of 12 weeks from today.

(D.B.Bhosale, J.)